

ESTTA Tracking number: **ESTTA986740**

Filing date: **07/11/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Evolutionary Guidance Media R&D Inc.
Granted to Date of previous extension	07/13/2019
Address	70 SLATE QUARRY ROAD RHINEBECK, NY 12572 UNITED STATES
Correspondence information	MEREDITH LOWRY WRIGHT LINDSEY & JENNINGS LLP 3333 PINNACLE HILLS PARKWAY SUITE 510 ROGERS, AR 72758 UNITED STATES mlowry@wlj.com, bcole@wlj.com, aelliott@wlj.com 4796313282

### Applicant Information

Application No	88219305	Publication date	05/14/2019
Opposition Filing Date	07/11/2019	Opposition Period Ends	07/13/2019
Applicant	Cyberman Security, LLC 3370 N.E. 190th. Street #801 Aventura, FL 33180 UNITED STATES		

### Goods/Services Affected by Opposition

Class 016. First Use: 2018/05/04 First Use In Commerce: 2018/05/04  
All goods and services in the class are opposed, namely: Comic books

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4197051	Application Date	07/18/2011
Registration Date	08/28/2012	Foreign Priority Date	NONE
Word Mark	CYBERHERO LEAGUE		

Design Mark	<h1>Cyberhero League</h1>
Description of Mark	NONE
Goods/Services	<p>Class 041. First use: First Use: 2010/08/01 First Use In Commerce: 2011/02/01 Interactive educational and entertainment services, namely, providing a web-based virtual educational theme-park featuring individuals, companies, and organizations engaged in charitable activities, which actively use the Internet to help other people, animals, or the environment</p> <p>Class 045. First use: First Use: 2010/08/01 First Use In Commerce: 2011/02/01 Providing a social networking website at which a user can give charitable gifts to others; Providing a social networking website for entertainment purposes, featuring individuals, companies, and organizations engaged in charitable activities, which actively use the Internet to help other people, animals, or the environment</p>

Attachments	85374322#TMSN.png( bytes ) Opposition.pdf(467241 bytes )
Signature	/Meredith Lowry/
Name	MEREDITH LOWRY
Date	07/11/2019

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>EVOLUTIONARY GUIDANCE MEDIA R&amp;D INC.,</b>	)	
	)	
<b>Opposer,</b>	)	<b>Opposition No. _____</b>
	)	
<b>v.</b>	)	<b>Serial No. 88219305</b>
	)	
<b>CYBERMAN SECURITY, LLC AKA THE CYBERHERO ADVENTURES: DEFENDERS OF THE DIGITAL UNIVERSE,</b>	)	<b>Mark: THE CYBERHERO ADVENTURES DEFENDERS OF THE DIGITAL UNIVERSE</b>
	)	
<b>Applicant.</b>	)	<b>Published: May 14, 2019</b>
	)	

**NOTICE OF OPPOSITION**

Opposer, Evolutionary Guidance Media R&D Inc. (hereinafter “Opposer”), a Delaware corporation with its principal place of business at 70 Slate Quarry Road, Rhinebeck, New York, 12572, believes that it will be damaged by the registration of the mark shown in Application Serial No. 88/219,305, and therefore opposes registration of the same under Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Application Serial No. 88219305 (the “Opposed Application”) filed by Cyberman Security, LLC AKA The CyberHero Adventures: Defenders of the Digital Universe, (hereinafter “Applicant”) seeks registration of the mark THE CYBERHERO ADVENTURES DEFENDERS OF THE DIGITAL UNIVERSE (“Applicant’s Mark”). The Opposed Application seeks registration Applicant’s Mark in connection with “Comic books” in International Class 16.

2. The Opposed Application was filed on December 6, 2018, based on Applicant's alleged first use of Applicant's Mark in commerce on May 4, 2018, and was published for opposition in the *Trademark Official Gazette* on May 14, 2019. Opposer timely filed an extension of the opposition period to May 14, 2019. The original June 13, 2019 deadline to file a notice of opposition was extended to July 13, 2019.

3. Opposer is engaged in the business of providing interactive educational, entertainment, and social networking services, particularly providing web-based games, toys, and other materials using storytelling, animation, cartoon drawings, and cartoon characters to encourage and develop using the Internet to help other people, animals, or the environment. These services are provided under Opposer's registered CYBERHERO LEAGUE mark, the details of which are presented in the table below, and under various common law marks such as "CYBERHEROES", "CYBERHERO", and "CYBERHERO LEAGUE ADVENTURE SERIES" (collectively, "Opposer's Marks"):

Mark	CYBERHERO LEAGUE
Registration No.	4,197,051
Registration Date	8/28/2012
Goods and Services	<p>Class 041: Interactive educational and entertainment services, namely, providing a web-based virtual educational theme-park featuring individuals, companies, and organizations engaged in charitable activities, which actively use the Internet to help other people, animals, or the environment.</p> <p>Class 045: Providing a social networking website at which a user can give charitable gifts to others; Providing a social networking website for entertainment purposes, featuring individuals, companies, and organizations engaged in charitable activities, which actively use the Internet to help</p>

	other people, animals, or the environment.
First Use Date	8/1/2010
Use in Commerce	2/1/2011

4. Opposer has used its registered CYBERHERO LEAGUE Mark in commerce in the United States continuously since at least as early as February 2011, and long prior to the filing of the Opposed Application. Opposer has used its common law marks in commerce in the United States continuously since at least as early as February 2011.

5. Opposer's registration for the CYBERHERO LEAGUE Mark identified in the chart above is incontestable under 15 U.S.C. §1065, and is therefore conclusive evidence of the validity of the registered CYBERHERO LEAGUE mark, of Opposer's ownership of the CYBERHERO LEAGUE mark, and of Opposer's exclusive right to use the CYBERHERO LEAGUE mark with the covered goods and services.

6. As identified in the Opposed Application and as shown on Applicant's website, Applicant associates Applicant's Mark with comic books and/or other materials including storytelling, animation, cartoon drawings, and cartoon characters to provide empowering, engaging, and entertaining stories.

Claim 1 : Likelihood of Confusion under Trademark Act § 2(d)

7. Opposer repeats and alleges each and every allegation set forth in Paragraphs 1 through 6.

8. Applicant's Mark so resembles Opposer's Marks as to be likely, when applied to the goods and services identified in the Opposed Application, to cause

confusion, mistake, or deception among purchasers, users, and the public, thereby damaging Opposer.

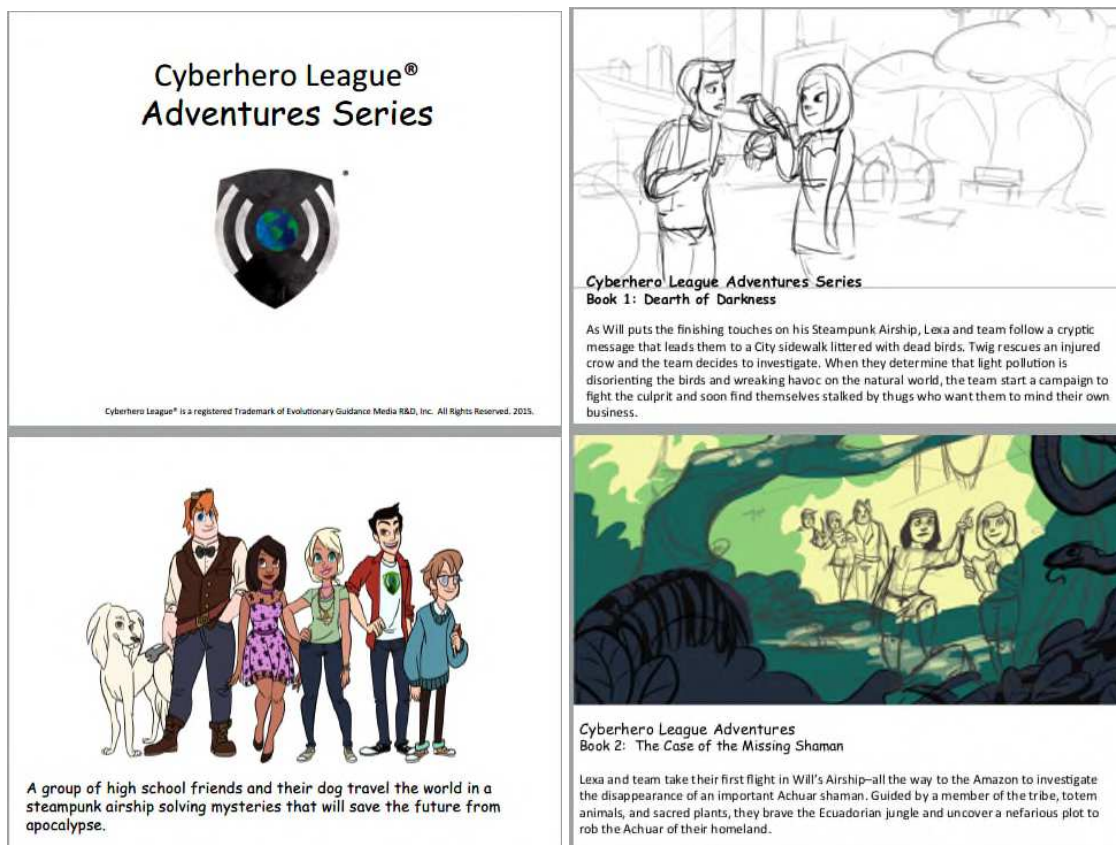
9. Opposer's Marks and Applicant's Mark are highly similar, with Applicant's Mark incorporating the term CYBERHERO, which is included in Opposer's Registered CYBERHERO LEAGUE mark, common law CYBERHEROES CYBERHERO, and CYBERHERO LEAGUE ADVENTURE SERIES marks.

10. While Applicant's Mark does not literally incorporate the term LEAGUE, as included in Opposer's Registered CYBERHERO LEAGUE mark, Applicant's Mark nevertheless incorporates a term that is highly similar. In particular, Opposer's Registered CYBERHERO LEAGUE Mark uses the term "LEAGUE" which denotes a collection of people working together for a particular purpose, typically mutual protection or cooperation. Applicant's Mark incorporates the term "DEFENDERS", which also denotes a collection of people working together for a particular purpose, such as protection and cooperation.

11. Furthermore, Applicant's Mark incorporates a substantial portion of Opposer's common law CYBERHERO LEAGUE ADVENTURE SERIES mark.

12. In addition to the high similarity of Opposer's Marks and Applicant's Mark, the associated goods and services are also highly similar. As noted, Opposer's Marks are used in connection with educational and entertainment services using storytelling, animation, and cartoon characters:

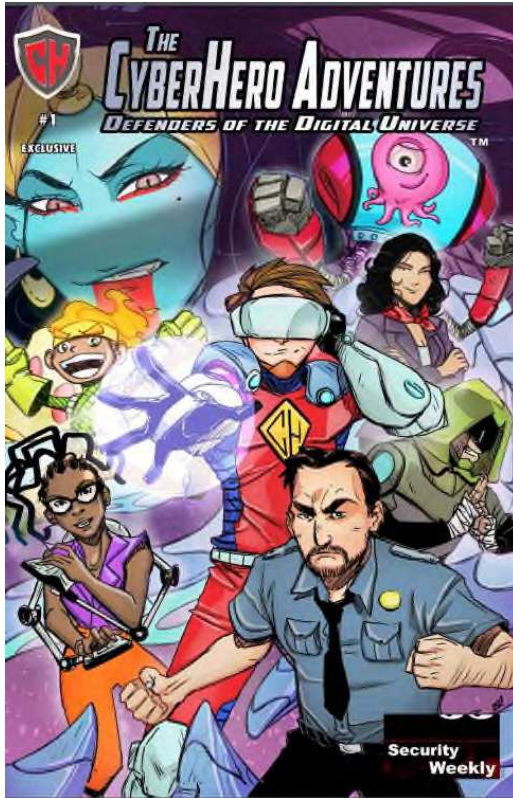




13. Applicant's Mark is also associated with comic books, storytelling, and cartoon characters:







14. The goods and services associated with Applicant's Mark and identified in the Opposed Application are closely related to, used for the same or similar purposes, and/or are or will be advertised and promoted to and directed at the same trade channels, the same purchasers, and are or will be used in the same environment as Opposer's goods and services.

15. Simultaneous use of Applicant's Mark on the goods and services set forth in the Opposed Application and Opposer's Marks on Opposer's goods and services is likely to cause confusion, mistake, or deception among purchasers, users, and the public, thereby damaging Opposer.

16. Use by Applicant of Applicant's Mark on the goods and services set forth in the Opposed Application is likely to lead to the mistaken belief that

Applicant's goods and/or services are sponsored by, affiliated with, approved by, or otherwise emanate from Opposer.

17. Applicant's Mark so resembles Opposer's Marks as to be likely, when applied to Applicant's goods and services, to cause confusion, to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d), thereby damaging Opposer.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present opposition be sustained in favor of Opposer and Application Serial No. 88219305 be refused registration.

Respectfully submitted,

WRIGHT, LINDSEY & JENNINGS LLP



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*Attorneys for Opposer*

## **CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2019, a copy of the above Notice of Opposition was served by first class mail, postage prepaid, on Applicant to the following correspondent of record:

CYBERMAN SECURITY, LLC  
3370 N. E. 190<sup>th</sup> Street #801  
Aventura, Florida 33180



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Meredith Lowry